



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: August 29, 2003

COUNCIL DISTRICT: 03

SUBJECT: PDC02-072. PROTEST OF A MITIGATED NEGATIVE DECLARATION FOR A PLANNED DEVELOPMENT REZONING FROM LI LIGHT INDUSTRIAL TO A(PD) PLANNED DEVELOPMENT TO ALLOW UP TO 260 SINGLE-FAMILY ATTACHED RESIDENTIAL UNITS ON A 3.18 GROSS ACRE SITE LOCATED AT THE NORTHWESTERN CORNER OF LICK AVENUE AND WEST ALMA AVENUE

BACKGROUND

This staff report addresses the protest of a Mitigated Negative Declaration (MND) for a Planned Development Zoning to allow the demolition of an existing bowling alley and light industrial building and the construction of up to 260 single-family attached residential units on a 3.18 gross acre site in the LI Light Industrial Zoning District located on the southwest corner of Lick Avenue and West Alma Avenue. If the Planning Commission upholds the Negative Declaration, the Planned Development Zoning will be considered by the Commission immediately following this item. A staff report for the Planned Development Zoning will be available prior to the public hearing.

The existing bowling alley and light industrial building front onto Lick Avenue north of West Alma Avenue. A surface parking lot located adjacent to Lick Avenue and West Alma Avenue takes access from Lick Avenue. Existing multi-family attached residential uses are located on the eastern side of Lick Avenue, and multi-family detached residential uses are located on the southern side of West Alma Avenue; both are directly across the street from the subject site. An elevated active rail line used by both light rail and heavy rail is located adjacent to the site to the west, and a day care and large VTA park'n'ride lot and multi-modal transit station are situated immediately to the north of the site.

CEQA Mitigated Negative Declaration Requirements

A Mitigated Negative Declaration (MND) must be prepared in conformance with the California Environmental Quality Act (CEQA) of 1970, as amended. Public Resources Code Section 21064.5 and CEQA Guidelines Section 15070 state that a MND may be prepared if the Initial

Study identifies a potentially significant effect for which the project proponent has made or agrees to make project revisions that clearly mitigate the effects. Additionally, an MND may not be used if any substantial evidence indicates that the revised project with mitigation may still have a significant effect on the environment.

Mitigated Negative Declaration

On June 27, 2003, the Director of Planning, Building and Code Enforcement (PBCE) completed an Initial Study, and circulated an MND for the proposed project to property owners and occupants within 1,000 feet of the project site. The MND and Initial Study were available (1) at the Department of Planning, Building and Code Enforcement, (2) online on the Department's website, (3) at the Main Martin Luther King Jr. Library, (4) at the Biblioteca Latinoamerica Branch Library, and (4) at the Willow Glen Branch Library. The public review period began on June 27, 2003, and ended on July 23, 2003.

Letters of Protest

On July 18, 2003, a letter protesting the adequacy of the MND was filed in the Department of Planning, Building and Code Enforcement and a supplemental letter was filed on July 23, 2003 (see attached). The letters expressed concern about a number of environmental issues including compatibility, aesthetics, traffic, noise, shade and shadows, and adequacy of public services. The letters allege that these issues were inadequately addressed and there are significant flaws, shortcomings and oversights in the analyses. The letters also express general opposition to the project and concern regarding the public process for both the current PD Zoning and prior General Plan Amendments for the project site.

On July 23, 2003, a second letter (see attached) protesting the adequacy of the MND was filed in the Department of Planning, Building and Code Enforcement by the Preservation Action Council of San Jose. The letter expressed concern regarding the evaluation of the existing bowling alley and sign as possible historical resources on the site.

MND Protest Hearing Procedure

San Jose Municipal Code Section 21.06.030 sets forth the MND protest hearing procedure. If after reviewing the protest, the Director of Planning adopts the Negative Declaration, the Planning Commission must hold a noticed public hearing on the MND protest to consider all relevant information and materials concerning whether the project may have a significant effect on the environment. The action of the Planning Commission in considering the protest is limited to environmental issues. If the Commission finds that the project may have a significant effect on the environment, the Commission must require the preparation of an Environmental Impact Report. If the Planning Commission finds that the project will not result in a significant impact on the environment and upholds the action of the Director, the Negative Declaration becomes final and no further appeals on the matter may be considered.

ANALYSIS

Following is a detailed response to the environmental concerns raised in the three letters of protest (see attached). Each of the specific comments in these letters is numbered and the numbers are used below to identify responses to individual comments.

RESPONSE TO COMMENTS RECEIVED FROM HARVEY DARNELL, ALISON ENGLAND, KEN EKLUND, TOM SMITH, HELEN SOLINSKI, SUSAN KUSTERS ET AL DATED JULY 12, 2003 AND JULY 23, 2003.

Opposition to a project itself is only relevant to a protest of a Negative Declaration if the opposition is specifically based in an impact on the physical environment. Some of the issues raised in these letters are specific to environmental impacts; however, other comments are related only to the stated opposition to the project itself. In order to ensure that all issues raised in the protest document are clearly addressed, the issues are segregated according to whether or not they relate to the environmental impacts of the proposed project. Issues that do not appear to be related to the protest of the Negative Declaration are listed first, with the reasons why they do not appear to be pertinent to the environmental impacts of the project.

RESPONSE TO COMMENTS THAT DO NOT ADDRESS ENVIRONMENTAL IMPACTS

Comment 1) Neighborhoods Support the Original Plan The discussion under this heading recalls the process by which the Tamien Station Area Specific Plan was adopted, including the provision for neighborhood input and support. The subsequent revisions to the Plan are summarized, and objections voiced to the process followed for those revisions. These comments express the protestants' opinions about the processes that were followed and the revised Plan; they do not raise questions about the significance of the currently proposed project's impacts on the environment.

Comment 2) The City Must Uphold the Vision of the Original Specific Plan This section is closely related to the first point. These comments speak to the group's opposition to the project and the process; they do not raise questions about the currently proposed project's environmental impacts.

Comment 4) Neighborhoods Do Not Support High-Rises in this Low-Rise Residential Area, and They Reject High-Density With Out Solid Plans for Amelioration The discussion under this heading speaks only to the noticing of meetings and the participation in meetings held to discuss the project. There is no discussion of environmental impacts from the currently proposed development project under this heading. See the project staff report for a discussion of public participation and public comment regarding the proposed project.

Comment 17) Community Benefits Agreement This comment states that such an agreement should have been prepared to provide additional services or benefits to the area. There is no discussion of environmental impacts from the currently proposed development project under this heading. See the project staff report for a discussion of the availability of commercial services to the Tamien area.

Comment 18) Getting a Park for Tamien (or Not) This comment discusses the absence of a previously planned park in the area, and questions the use of park impact funds. There is no discussion of environmental impacts from the currently proposed development project under this heading. See the project staff report for a discussion of the plan for parks within the Tamien Specific Plan area.

Comment 22) Neighborhood Efforts Address Lack of Planning, Should be Encouraged to Continue. This comment speaks to community planning processes, prior efforts, area-wide policies, and compares the project area to other planning areas in the City. It is suggested that the proposed project should be located elsewhere. There is no discussion of environmental impacts from the currently proposed development project under this heading. See the project staff report for a discussion of the compatibility of the proposed project with the surrounding neighborhood and its consistency with the City's General Plan strategies and policies.

Comment 23) Settling City-Wide Issues, Coordinating Multi-District Project This discussion summarizes past planning processes and action, suggests that high density high rises should be built elsewhere, and references, at a general level, some of the environmental issues raised in other comments below.

Comment 24) Underserved Areas Should Not Have to Pay to Get Denied Services and Facilities. This discussion is about the use of park impact fees, and expresses problems about inadequate community facilities in the area. See the project staff report for a discussion of the plan for parks within the Tamien Specific Plan area.

Comment 25) No True Forum for Discussing Development in the Tamien Area has Been Presented Since the Specific Plan was Discussed in 1994. Neighborhoods Feel Left Out, and Rightly So.

This discussion is about perceived process problems and procedural issues, with some references to the use of park impact fees and does not discuss the potential environmental impacts of the proposed project. See the project staff report for a discussion of public comments regarding the proposed project.

Comment 26) Not a Good Neighbor This comment summarizes the position of the document's authors relative to the proposed development, the general inadequacy of the Initial Study, the likelihood that mitigations will not occur, and the need to re-do plans for the area. There are no references to specific environmental impacts from the proposed project. See responses below to specific environmental concerns raised in the letter of protest below.

RESPONSE TO COMMENTS REGARDING THE ENVIRONMENTAL IMPACTS OF THE PROJECT

Comment 3) The Low-Rise Scale of the Surrounding Neighborhoods and the Suburban Setting precludes Twin High-Rises

The issue raised in this comment is the compatibility of the proposed building height with the surrounding land uses. It is stated that this project includes the "first proposed high-rises outside of downtown", and that there has been no review of the basic compatibility of such an action. The

discussion in support of this particular point states that six-story development would not invade the “skyline or airspace” and would avoid issues of invasion of privacy and light deprivation.

Response:

Land Use Policy

The threshold of significance for land use impacts recommended by the CEQA Guidelines [Appendix G, IX.(b)], and used in this Initial Study is “Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect”.

The City’s adopted General Plan identifies 50 feet as the allowed building height throughout the City, except where taller buildings are specifically allowed. Buildings taller than 50 feet are, however, allowed in a number of areas other than the Downtown Core Area. Examples include:

- ? Heights up to 120 feet are permitted in Transit Areas. Transit Areas are defined as properties within reasonable walking distance (approximately 2,000 feet) of any passenger rail station;
- ? Heights up to 120 feet are permitted in some areas of the Midtown Specific Plan Area
- ? the Rincon South Specific Plan allows buildings up to 85 feet in height;
- ? the “tall building sites” within the Communications Hill Specific Plan places no height limit for buildings on these sites.
- ? Up to 120 feet in height is permitted at specific locations on the Santana Row property; and,
- ? Maximum building height at Oakridge Mall is 70 feet;

The City also contains existing buildings that exceed six stories, including an existing 12-story office building adjacent to Santana Row, a 13-story office building at the intersection of North First and Taylor Streets, across the street from an approved 14- story (maximum height 150 feet) residential building; and a 95-foot tall institutional/office building at the southeastern corner of Bascom Avenue and Moorpark.

The City’s adopted General Plan establishes policies for the community as a whole, and lays the basic foundation for the policies that are relied upon in making day-to-day land use decisions. The Tamien Station Area Specific Plan identifies development intensities and building forms that are considered compatible with the multi-modal transportation corridor and stations planned and built at this location and with the surrounding residential neighborhoods. The project site is between lands already designated for high-density residential uses and the transportation corridor.

The City’s adopted General Plan identifies the project site as suitable for buildings up to 120 feet in height, taking into consideration the existing and planned uses, and the site’s proximity to major transportation facilities. Planned residential densities in the area range from Medium (8-16) to Transit Corridor Residential (25-150). The project proposes to locate 45-foot tall townhouse buildings along the Lick Avenue frontage in order to accomplish a transition to the nearest existing residential buildings to the east.

The proposed project is, therefore, specifically consistent with the adopted General Plan policies for the site and the area, and would not create a significant impact on the environment as a result of inconsistency with policies related to building height.

Aesthetics

A specific issue raised in the protest is that the project will be an “invasion of a critical skyline”, and that it would cause “damage to the skyline/view of the surrounding neighborhoods”. The CEQA Guidelines (in Appendix G) and the Initial Study for this project identify the following as aesthetic thresholds of significance: (a) having a substantial adverse effect on a scenic vista, (b) damaging scenic resources, or (c) degrading the existing visual character or quality of a site and its surroundings. These are identified on page 13 of the Initial Study as the thresholds used in evaluating the impacts of this project.

While the proposed building will be visible from off the site, it will not obscure a scenic vista or damage a scenic resource. Placing the proposed structures on the site will change the appearance of the property which presently contains two aging commercial structures and a large parking lot, to an aesthetically different, new residential building complex. That change would be consistent with the adopted General Plan and the City’s adopted Residential Design Guidelines, and would not be considered a degradation of existing visual character. Based on this analysis, the proposed change to the site aesthetics is not considered a significant impact to the environment.

Comments 5 & 6) Non-Integration of Communities & No Aesthetic Integration, Piecemeal Land Use Planning in Tamien

In these comments, the protest expresses concern that the project is physically and psychologically isolated from the surrounding neighborhood, that the architectural style of the buildings is not similar to those in the neighborhood, and the open space is not visible to nearby residents.

Response: The proposed residential towers represent a housing type that is unique in the Tamien Area; however this unique housing type is consistent with the City’s General Plan and the Tamien Specific Plan area and is appropriate infill development for this property. The proposal has made efforts to incorporate strong pedestrian connections both between the project buildings to increase interaction between residents and between the proposed development and the larger community. A pedestrian connection plan submitted by the applicant shows a series of walkways and links on the landscaped podium open space area that facilitates use of the common open space area by residents. Additionally, a series of pedestrian walkways that provide direct access to the neighborhood are incorporated into the project, namely: 1) two direct walkways to the VTA and Caltrain station from the northwestern corner of the property; 2) three walkways that provide direct access to Lick Avenue; 3) one walkway that provides access to the corner of Lick and Alma; and 4) a pedestrian connect to Alma at the south western corner of the property.

While the two 11-story residential buildings will be set back from the street and from the surrounding neighborhood, the townhouses will be located approximately 12 feet behind the sidewalk along Lick Avenue, with front doors that face the street. The three-story stucco and wood townhouses will be visually compatible with the two-story wood frame apartment buildings directly across Lick Avenue. The front yards/patios of the townhouses will be visible from Lick Avenue, as will a substantial number of new street trees planted along the project’s two street frontages.

The protest asks for a map of the Specific Plan area that shows the relationship of the proposed project to other land uses in the vicinity. While the land use designation for the project site has been changed (from *Mixed Use* to *Transit Corridor Residential*), the project site is still included within the

Tamien Station Specific Plan area, which is illustrated in the adopted General Plan. Based on this analysis the impacts are considered non-significant.

Comment 7) Aesthetic Characterizations: Inaccuracies in the Initial Study Under this heading, the protest refers to four specific phrases which are itemized separately.

Response:

“Highly Urbanized Setting” is Incorrect.

This comment is apparently based on the belief that “highly urbanized” means something different than what is discussed in the Initial Study; the definition assumed in the protest document is unclear. The discussion in the protest states that the project area has a “street level quality” that is different than “highly urbanized.”

The meaning of “highly urbanized” as it is used in the Initial Study is the condition found in an area of a city that is more completely developed (*i.e.*, no undeveloped properties) with higher intensity uses than is the average. There is no intended reference to height or elevation.

The project area is completely developed, and has been for many years. Immediately adjacent to the west is a freeway and one of the more intense multi-modal transportation centers in the County. Land use designations and land uses in the immediate vicinity of the site include *Transit Corridor Residential (25-55 du/ac)*, *Medium Density Residential (8-16 du/ac)*, *Medium High Density Residential (12-25 du/ac)*, *General Commercial*, and *Light Industrial*. There are no land uses on or adjacent to the project site, or within the Specific Plan boundary that could be characterized as “low intensity”, “rural”, or “non-urban” in nature. There are no vacant properties that have never been developed, although some previously existing buildings may have been razed for new development. Many of the properties, especially along Lick Avenue, are developed with a high percentage of building and pavement coverage and minimal green space. The area is, therefore, appropriately described as highly urbanized.

“Gradual Change in Scale” is Incorrect.

This comment states that the 45-foot tall townhouse buildings that are characterized in the Initial Study as providing a “gradual change in scale between the existing multi-family residential buildings...and the proposed condominium towers” will not provide visual buffering. The protest document says that from all perspectives except that in front of the townhouses, the proposed towers will visually dwarf the townhouses.

The discussion that is referenced in this comment is not found in the aesthetics section of the Initial Study, but is found in the discussion of land use impacts (page 37 of the Initial Study). The issue addressed in the Land Use section, is the physical relationship of the proposed project to the residential development that is closest to the project site. The nearest residences are two-story multi-family dwellings (in structures approximately 25 to 30 feet tall) on the east side of Lick Avenue. In order not to overpower those dwellings, the project proposes a row of three-story townhouses along the Lick Avenue frontage. The townhouse buildings will be approximately 42 feet high and will be, set back a minimum of 10 feet. The tower structures, which will be 120 feet tall, will be set back approximately 50 feet from the street property line, and approximately 125 feet from the two-story apartment buildings. There will be, therefore, a transition in building height over distance, from the tower structures to the two-story apartments across Lick Avenue.

“Not Inconsistent With Existing Pattern of Area Development” is Extremely Inaccurate.

As discussed above, the project area is developed with urban uses, including transportation facilities and high-density residential development. The placement of the tallest buildings at a location that emphasizes their proximity to transit and maximize their distance from existing, lower rise buildings further serves to avoid compatibility impacts with nearby uses.

No Actual Visual Aids Prepared by Which Individuals Can Judge Aesthetic Impacts.

This comment states that visual impact can only be judged if multiple visual simulations from various viewpoints are prepared and widely disseminated.

The most commonly used tool for evaluating the appearance of proposed new buildings is the architectural elevation prepared by an architect. Most buildings built in the City of San José are evaluated and approved on the basis of elevations alone. Figures 5 and 6 of the Initial Study are reduced versions of the proposed elevations. More detailed elevations are on file in the Planning Division offices located at City Hall, 801 North First Street, Room 400.

Comment 8) Traffic Calculations and Characterizations: Inaccuracies in the Initial Study

Response:

Connector Streets to Freeway Nodes Left Out; These Connectors Suffer Volume Requiring Further Study

This comment says that the traffic report did not look at relevant streets and did not address how southbound trips would get on Route 87. There is also a statement that the total volume of trips that will use SR 87 must use two lane streets, which therefore exceeds the threshold of 10 trips per lane that requires additional traffic study.

All of the streets providing direct ramp access between I-280 and the project site were listed in the traffic report (pages 5-6 and Figure 6 in Appendix F of the Initial Study).

Project-generated traffic destined for southbound SR 87 to access jobs or other destinations such as Edenvale and Coyote Valley was assumed to travel south on Almaden Expressway and streets south of the site. These vehicles would use the Curtner Avenue interchange. The number of vehicles using ramps at Auzerai Avenue/Woz Way is expected to be negligible because of the additional three miles of travel required to use these ramps, measured from the project driveway, traveling north through the neighborhood, entering the freeway at Auzerai Avenue and traveling back past the site on SR 87.

Detailed impact analyses were done for all intersections to which the project was expected to add 10 trips or more per lane during a peak hour. Based on this analysis project traffic levels are considered non-significant.

Six Trips Per Lane at Bird/Willow and Bird/Minnesota Cause Traffic on Bird Requiring Further Study & Freeway Congestion Not Considered

These comments question the assumption in the traffic analysis that these intersections will not experience significant impacts and do not warrant additional study and that project traffic will use routes different than those considered in the TIA because the freeways are so congested.

In the transportation impact analysis (TIA) it was estimated that during the peak hours, fifteen percent of the project-generated traffic is coming from or going to I-280 from the west. It was assumed that traffic from this direction would use SR 87 as a connection to the Alma Avenue ramps to access the project site. It was also assumed that five percent of the project traffic would travel to or from the site using Bird Avenue to north of I-280 and an additional five percent would originate from the Willow Glen area south of I-280 and also travel on Bird Avenue.

To evaluate the effect of more project traffic using the Bird Avenue interchange instead of the SR 87/Alma Avenue interchange because of congestion, one-third of the 15% noted above (or an additional 5% of the total project traffic) was re-assigned to Bird Avenue. The intersections of Bird Avenue/I-280 northbound ramps, Bird Avenue/I-280 southbound ramps, Bird Avenue/Willow Street and Bird Avenue/Minnesota Avenue were re-analyzed assuming this re-assignment. This analysis also included the five percent from Bird Avenue north of I-280 as well as the five percent from the Willow Glen area assumed in the original analysis. With the addition of project traffic, the four intersections are projected to operate with the following levels of service under Project Conditions:

Intersection	LOS AM (PM)
Bird Avenue/I-280 Northbound ramps	C- (D+)
Bird Avenue/I-280 Southbound ramps	C (C)
Bird Avenue/Willow Street	C- (D+)
Bird Avenue/Minnesota Avenue	D+ (C-)

The results of this analysis show that all four intersections would continue to operate at acceptable levels of service, even with additional traffic. Based on the City's Level of Service Policy, these intersections would not be significantly impacted by the proposed project.

It should also be noted that planned improvements to SR 87 (adding High Occupancy Vehicle lanes) will reduce existing congestion and improve traffic operations on the adjacent freeway. This will make it more desirable to stay on the freeway and use the Alma Avenue ramps located closest to the project site. The HOV improvements are scheduled to be complete by Summer 2005.

As noted in the traffic study, the 10 peak hour trips per lane threshold is a very specific, quantitative measure that is used to determine when a more detailed analysis needs to be done for a particular intersection. The threshold is used by the City of San José, as well as the Santa Clara County Congestion Management Agency (CMA), and is very explicit: ten vehicle trips per lane per hour in a peak hour. Lanes are a measure of capacity through an intersection; vehicle trips are a measure of demand. If a certain minimal amount of demand (vehicle trips per lane) will be created through an intersection, then a more detailed analysis is done to determine whether the project demand will cause the intersection to become more congested than is considered acceptable under City and CMA policies.

The projected volume on each movement (lane) at the two intersections mentioned in this comment varied from three to six vehicles per lane. As noted above, the Bird/Alma and Bird/Willow intersections will continue to operate acceptably with the addition of project traffic and will not result in a significant impact.

Morning Bus Traffic on Lick

This comment says that the traffic analysis did not address project impacts on busing schoolchildren, and states that the buses use Lick Avenue and the Tamien Station driveway as a staging area.

The existing condition traffic counts conducted in February 2002 for the TIA included buses that travel through the study intersections and neighborhood. Field observations during the peak periods were conducted on Lick Avenue (and on the other nearby roadways) and no significant traffic problems with school buses were observed. School buses that use the transit station as a staging area would not be impacted by the proposed project, which will not change the transit station parking lot or driveway. Traffic levels are considered non-significant when including this criteria in the analysis.

Adjusting for Actual Traffic Flows with Historic Data

This comment states that traffic studies should average five years of counts to compensate for the current economic downturn that has reduce area traffic.

CEQA requires that project impacts be compared to real world, existing conditions. Averaging multi-year conditions would not represent any condition that actually ever existed. The traffic volumes used in the TIA were compared to historic counts maintained by the City of San José for five intersections in the immediate vicinity of the project site. At four locations, recent traffic counts were higher than historic counts, or were found to be within the typical day-to-day variation of 5% to 10%. At the Almaden Avenue/Willow Street intersection, the Year 2000 count was 13% higher than the Year 2002 count used in the study. It is the only intersection that showed such a change, and the difference may be due to multiple circumstances. Since there is no definite trend that could be identified for intersections in the project vicinity, the use of the most recent counts is the appropriate environmental baseline for identifying project impacts. Utilizing existing conditions, as directed by CEQA, the proposed project does not result in a significant traffic impact.

“Cut-through” Traffic Problem with Neighborhoods, Undermines Accuracy of Traffic Study

This comment identifies cut through traffic in the neighborhood as a more important indicator of significant traffic impacts than delay at an intersection.

It is not possible to accurately predict how many project-generated vehicles would divert to local neighborhood streets to avoid signalized intersections, particularly since all of the study intersections operate acceptably with limited delays (in other words, none of the intersections in the immediate area are excessively congested, based on the City’s standards).

Given the number of possible cut-through routes, even if all of the potential project-generated peak hour traffic used local streets, the project-generated volume on any one street would be less than ten vehicles during the peak hour. While the addition of ten vehicles in an hour may be considered a nuisance, it would not constitute a significant traffic impact.

Reflect Changing Traffic Flow on Vine and Almaden

This comment states that the TIA should reflect the future change to Vine and Almaden, to make them two-way streets.

The June 2003 TIA prepared for this Initial Study studied the intersections on Vine Street and Almaden Avenue with their current configuration as well as with the possible one-way couplet conversion alternative (see page 15 of Appendix F). This analysis also addressed the shift in travel patterns that would occur if the conversion took place. The analysis found that the project would not result in any significant traffic impacts with either configuration.

Comment 9) Piecemeal Development: Housing Unit Overrun Mandates New Impact Study

This comment discusses the numbers of units allowed within the Tamien Station Specific Plan area, and the number addressed in the previously prepared EIR.

Response: Approval of the currently proposed PD zoning for the Alma Bowl property would bring to 872 the total number of dwelling units currently approved within the Specific Plan area. This is substantially less than the maximum number of units allowed by the current Specific Plan. The EIR prepared for the Specific Plan in 1995 addressed 1,500 dwelling units. Modifications made to the Plan after the EIR was prepared, reduced the total number of dwelling units allowed by the Specific Plan to 1,225. Since the original approval of the Plan, other modifications have been made to the Specific Plan that presently allows up to 1,682 dwelling units within the Plan area.

The 1995 EIR addressed the impacts of approving a Specific Plan that would allow for an estimated number of dwelling units, based on proposed land use designations and certain assumptions about the future development that would occur in the area. When modifications were made to the General Plan and the Specific Plan, CEQA review was done for the proposed changes. Consistent with state law and City policies, CEQA review is also done when individual developments are proposed, consistent with the General Plan and Specific Plan, and reflecting existing conditions present at that point in time.

The proposed project would not result in the development of a number of dwelling units that would exceed the number allowed by the adopted General Plan for the Specific Plan area.

Comment 10) Land Use “No Significant Impact” Inaccurate

Response: This comment states that the finding of no significant impact appears to be based on “the existing industrial use”. The comment states that the impact of the project on the neighborhood and future direction should be evaluated. It was pointed out in comment #10 that a “private walled-off community” would have a significant land use impact on the surrounding community.

The conclusion regarding land use impacts stated on page 38 of the Initial Study is reached on the basis of “The development of a high density residential complex”. The Initial Study clearly assumes that the commercial and industrial uses on the project site will be removed with implementation of the proposed project. The last sentence in the conclusion is:

“High density residential uses would not result in significant land use compatibility impacts with nearby multi-family residential, commercial, and child day care uses”.

The references to a walled off community are apparently to the two tower structures, which will be located on a platform structure, and set back from the streets and property lines. To avoid the appearance or function of a walled community, the project design places a row of townhouses along the Lick Avenue frontage. The front yard/patios for these units are at street level, and the front doors face the street.

Comment 11) Noise Study Ignores Highway 87, Noise Impacts on Project Residents, and the Reflection of Noise into Courtyard, Townhouses, and Neighborhoods

Response:

Initial Study Ignores Highway 87 as Source of Noise.

The protest document states that the Initial Study did not include impacts from noise on Highway 87.

This comment misinterprets the noise information in the Initial Study. As stated on page 51 of the Initial Study, noise levels were monitored for several 24-hour periods at the project site, which means that the total noise environment was measured. The noise study, dated April 26 & 27 2001 (Appendix E) not only refers to traffic on Highway 87, but it incorporates anticipated noise levels from the proposed addition of an HOV lane. The text of the Initial Study refers to the primary sources of noise, based on measurements and observations. The primary single event noise sources, which varied from 69 to 88 decibels, were trains, planes, and a bus on Alma Avenue (Table 1 on page 51 of the Initial Study).

The Western-Facing Windows Problem

The protest document states that eliminating windows and balconies will be a detriment to area aesthetics.

It is not clear why the protest document assumes that western facing windows and balconies were eliminated from the project design. The project plans show the windows and balconies as proposed (elevations in Figure 5 and 6 of the Initial Study). As stated on page 54 of the Initial Study, the project will incorporate the level of insulation necessary to achieve appropriate interior noise levels. While balconies on the westerly elevations cannot meet the noise standards normally considered optimum for outdoor activity areas, the project proposes to incorporate design features at the podium level that will achieve noise protection consistent with the City's guidelines for usable open space. The common open space will be also available to the residents of the project. The project does not propose, for noise mitigation purposes, to eliminate windows or balconies on the west facing facade of the buildings.

Noise Reflection Problem

This comment expresses concerns that noise from traffic and trains will reflect from the tower buildings into the neighborhoods to the west of the project.

Reflected noise is usually a problem where there are significant elevation differences. Any ground-based noise from the trains and traffic on Highway 87 that reflects from the proposed tower buildings would reflect from the building at the angle of incidence; *i.e.*, it would reflect upwards, into the air above the neighborhoods west of Highway 87.

Noise Non-Mitigation

This comment points out that the noise report in Appendix E assumed that a parking structure would shield the common open space. Since the parking is now below grade, it would not provide noise shielding.

The noise study identifies noise sources impacting the project site as including trains (both commuter trains and freight trains), traffic on both Alma and Lick, airplanes from Mineta San José International Airport, SR 87 traffic, and the light rail line. The Initial Study erroneously stated that an eight-foot

wall along the western edge of the platform (which was shown on the site plan) would provide noise reduction to 60 dBA DNL for the open space on the platform. The Initial Study discussion should have stated that a ten-foot wall at the western edge of the platform and an eight-foot wall adjacent to specific activity areas at the platform level (such as the pool and/or the open turfed area south of the pool) would achieve a DNL of 62 to 64 dBA. For an outdoor activity area that is impacted by noise from major roadways (Alma Avenue and SR 87) and from airplanes, this level of noise mitigation would be consistent with General Plan policies.¹ An update to the noise analysis in Appendix E of the Initial Study is attached as Appendix 1 to this report.

Since sound attenuation walls are not the most desirable method of noise mitigation for residential development, the City is proposing that the project include a statement on the General Development Plan that establishes a performance standard that would be met by final project design, as determined in the Planned Development Permit for the project. The statement would require that usable outdoor open space will be provided within the common open space for the project where noise levels are consistent with the noise environment that would otherwise be achieved with the walls addressed in the modified noise analysis (see attached Appendix 1). Achieving the performance standard could include: minor modifications to the site plan; re-orientation of the building footprint(s) relative to the placement of shorter or lower walls and the primary noise sources; partial enclosure of open space in a conservatory or greenhouse; and/or other design techniques that may be developed as the final project design is refined. Placing this performance standard on the General Development Plan will ensure that impacts associated with outdoor noise are mitigated to less than significant levels.

CEQA allows the substitution of a new mitigation measure for one previously proposed by the project, particularly if the public review process for a Negative Declaration causes the Lead Agency to conclude that mitigation measures identified in the Negative Declaration are infeasible or otherwise undesirable.

The CEQA Guidelines (§15074.1) identify the process for substituting a mitigation measure into a project subsequent to circulation of a Mitigated Negative Declaration, stipulating that a public hearing must be held to consider the project. Additionally, the new mitigation must be identified as equivalent or more effective in a written finding. No recirculation of the Negative Declaration is required.

Poor Noise-Reduction Design

This suggests that the townhouses be placed closer to the noise sources along the project's westerly boundary with the railroad.

The proposed project design protects the interior courtyard. Placing townhouse units nearer the railroad would not be environmentally superior to the proposed project.

¹Specifically, General Plan Noise Policy #1 acknowledges that outdoor open space noise levels effected by the airport and major roadways may not meet the 60 DNL guideline.

Comment 12) Detriment to Schools

The comment suggests that there are concerns about child safety and traffic from parents driving children to school. It is requested that studies be done to show additional costs not covered by the state impact fees.

Response: CEQA analysis is restricted to a discussion of impacts on the physical environment. Costs incurred by the school district are not considered environmental impacts under CEQA.

The project includes sidewalks along all street frontages. No line of sight or other conditions will be created that will contribute to safety impacts on school children. While parents driving children to school will contribute incrementally to traffic on neighborhood streets, these non-peak hour trips would not exceed the capacity of the streets and is not considered a significant traffic impact under City policy.

Comment 13) Privacy and Shade Issues The comment states that the buildings will have a direct line of sight into “anything around them”, including the project’s proposed townhouses. The shadow from the buildings is also identified as a “huge invasion into the surrounding neighborhood”.

Response: The comment bases its conclusion about the significance of visual intrusion upon a Tamien Area Specific Plan policy that states that structures taller than 30 feet should be “designed to avoid significant privacy and shade impacts on adjacent single-family or duplex neighborhoods”. Because of the expectations of residents in lower density residential development (*i.e.*, single family or duplex residences), oversight by multiple windows in a high-density structure can be a significant impact.

There are no duplex or single-family land uses adjacent to the project site or located directly across either street that borders the site. The proposed project’s townhouses would also not be either duplex or single-family land uses. There would be no direct line of sight into any existing residential unit from the two residential towers. The proposed townhouse units would have the same physical relationship to existing dwelling units in the area as the existing apartments on Lick Avenue (*i.e.*, the dwellings are across a public street, behind and facing the public sidewalk).

The shade and shadow analysis on pages 27-38 and Figures 8-17 of the Initial Study documents the amount of shading that would occur if the project is implemented. Noticeable shading would effect the high-density residential land uses south of Alma Avenue and mixed density neighborhood east of Lick Avenue on winter afternoons (Figure 17). Limited afternoon shading would occur on the apartment buildings on the east side of Lick Avenue in the spring and fall, in the afternoon (Figure 16). Limited shading would also occur in the spring and fall mornings on the childcare play area (Figure 14). Much of the playground area will be shaded in the morning during the winter (Figure 17). As stated on page 38 of the Initial Study, useable areas of the childcare center play area will remain unshaded throughout the day. The project will not result in a significant shade or shadow impact.

Comment 14) Fire and Safety Response Issues This comment asks for clarification of fire safety issues related to the project design and limited accessibility due to the narrow streets.

Response: The City’s Fire Department will provide fire protection services to the proposed project. Fire Department staff reviewed the proposal and prepared a response indicating that the San

Jose Fire Department standards for an Effective Firefighting Force (EFF) can be met. The Initial First Alarm (IFF) for fires in high rise buildings is composed of two engines, two truck/USAR (urban search and rescue vehicle) and one battalion chief for a total of 19 firefighting personnel. For a confirmed fire in a high rise structure, the effective firefighting force (EFF) or full first alarm assignment is five engines, three trucks, two USARs, four battalion chiefs, Hazmat incident team, paramedic supervisor, the air unit, and a Deputy Chief for a total of 56 firefighting personnel. San Jose Fire Department response times goals are an 11-minute travel time or less and 15-minute total response time or less.

Travel time is defined as the duration of time between the first unit's departure from the station to the arrival at the scene of the incident. Total response time is defined as the duration of time from the receipt of the call at the communication centre to the arrival of the first unit on the scene of the incident.

Both the IFF and EFF meet San Jose Firefighting response time standards. The IFF response team for the proposed project would constitute firefighting personnel from Station 3 at 98 Martha Street located 1.5 miles from the subject site, Station 6 at 1386 Cherry Street located 1.5 miles from the subject site and Station 1 at 225 North Market Street located 2.8 miles from the site. Travel time ranges from 4 to 4.5 minutes and total response times from the above stations range from 8 to 10 minutes. The EFF or full first alarm response includes the IFF stations and Station 30 at 454 Auzerais Avenue, Station 13 at 4380 Pearl Avenue, Station 26 at 528 Tully road, Station 4 at 710 Leigh Avenue, Station 10 at 511 S. Monroe Street, Station 16 at 2001 S. King Road, Station 2 at 2933 Alum Rock Avenue. Travel times range from 4.5 to 12 minutes and total travel time ranges from 11 to 15 minutes.

Streets, bridges and underpasses in the City of San Jose are designed to accommodate emergency response vehicles and to facilitate response times. Lick Avenue is a two-lane roadway providing one lane of traffic in each direction (60-foot right-of-way) and adequately accommodates emergency response vehicles. Alma Avenue in the vicinity of the project is a four-lane roadway (minimum 80-foot right-of way) with a posted speed limit of 35 miles per hour. Like Lick Avenue, Alma Avenue is sized to accommodate emergency vehicles. The Alma Avenue underpass meets the minimum 14-foot height vertical clearance requirement to allow emergency vehicles to safely pass under Highway 87.

No impediments to providing firefighting services to the subject project were identified in the review of project design.

Comment 15) Air Pollution and Solid Waste Handling and Disposal Issues The comment alleges that the site will be exposed to high levels of air pollution, particulates, and fumes, which will adversely effect maintenance of the site and health of the residents. Questions are also raised as to how solid waste will be handled.

Response: The railroad and roadways referenced in this comment run through a number of residential neighborhoods. The LRT is electric. The air quality impacts that would effect residents on the project site would not be substantially different than the levels effecting existing residents in the area. Air quality issues related to the project are considered non-significant.

Solid waste will be collected in conformance with existing regulations in the City of San José, meaning that putrescible waste would be collected at least weekly. Typical services for the proposed project would include compactors for garbage and recyclables in the basements of the two towers, and weekly curbside collection for the townhouses. Solid waste and recycling on site are considered non-significant.

Comment 16) Affordable Housing Issues The comment states that the proposed dwelling units will be too expensive, which is inconsistent with City goals for providing affordable housing.

Response: The General Plan does not mandate that all housing built in the City be affordable, and does not specify that new housing built in the Tamien Station Area include any stated percentage of affordable housing. The General Plan does specify that affordable housing should be distributed throughout the City rather than concentrated in specific areas. The policies of the Tamien Specific Plan call for a wide variety of housing opportunities for all income levels. In light of the fact that most of the residential units previously approved pursuant to the Tamien Specific Plan have been affordable units, the current proposal furthers the Plan's goal of achieving a variety of housing for all income levels. The presence or absence of affordable units in this proposed project does not relate to any impacts on the physical environment.

RESPONSE TO COMMENTS RECEIVED FROM PRESERVATION ACTION COUNCIL OF SAN JOSE DATED JULY 23, 2003.

A letter protesting the Negative Declaration adopted for the Tamien Place project was received from the Preservation Action Council on July 23, 2003. In order to respond to some of the questions received in this protest, City staff requested that additional research be done and an expanded report on the historical context of the building was prepared. Each of the issues raised in that letter is addressed separately below.

Comment A) The protest states that the proposed Negative Declaration does not address historical resources.

Response: The meaning of this comment is not clear. The Initial Study upon which the Negative Declaration was based describes, beginning on page 22, the existing cultural resources on the site, including the Alma Bowl building. The discussion is based on a historic evaluation of the Alma Bowl building that is referenced in this same comment. The report of that evaluation is also included as part of the Initial Study, in Appendix B.

The same comment reflects confusion about what historic report was used in preparing the Initial Study because the Initial Study refers to an evaluation done in April 2001. The historic report is attached to the Initial Study, and its opening sentence says "This historical evaluation was carried out in April of 2001 and updated June of 2003..." Only one historic report was used in preparing the Initial Study.

Comment A(1) The protest says that the report does not indicate that someone prepared it with training in architectural history.

Response: Page 2 of the historic report states that the supervising consultant for the report satisfies the professional qualification standards of the Secretary of the Interior's Standards and is listed under Architectural History in the Referral List for Historical Resources Consultants by the California Historical Resources Information System. In addition, the City staff does its own independent review of all CEQA documents for which the City is Lead Agency, and determines whether or not the analysis is adequate for the purpose, or whether additional analysis is required. Appendix B of the Initial Study contains, on page 1, the qualifications of the primary author of the report.

Comment A(2) The protest states that the historical background is "lacking in any property history for the site", except for the owner in 1876. The comment further clarifies that the report contains an error *vis-a-vis* the founding of the Pueblo of San José relative to the Mission Santa Clara, and says that the report incorrectly indicates that San José was settled by Europeans.

Response: In the revised report dated August 22, 2003, a more extensive history of the property's ownership is provided, as is clarification of the dates for the founding of the Pueblo of San José and Mission Santa Clara. The Alma Bowl property was not part of either of these early settlements.

The report attached to the Initial Study does not state that San José was settled by Europeans, it says that the "first Europeans to settle in the San José area were the Spanish".

The revised historic report says that the project site is near the established Willow Glen community, a neighborhood known for its historical bungalow houses (dating primarily to a period between 1900 and the 1930's). The Alma Bowl building was built in the early 1960's, and is not representative of that same period as the bungalows.

Comment A(3) The protest states that a report on the history of bowling prepared for a different project (redevelopment of the Fiesta Lanes site) was more complete than the report done for this Initial Study and advises the Planning Director to review the Fiesta Lanes report.

Response: Planning staff was responsible for preparing CEQA documents for both projects and reviewed both reports prior to the adoption of the Negative Declaration for the proposed project.

Comment A(4) The protest says that the information on the architect of the Alma Bowl building, and his other work in the area, is incomplete and the Planning Director did not have sufficient information to assess the cultural impacts of the proposed project on significant architectural resources.

Response: The supplemental information in the August 22nd historic report includes additional information about Alan Walters personally, and identifies a number of prominent buildings designed by his firm, including the Comerica Building, the AT&T building downtown, and Joe West Hall at San José State. The discussion states that the construction of the Alma Bowl building began in 1960, and the Alma Bowl was the first bowling alley in Santa Clara County to use Brunswick "Gold Crown" equipment, which was manufactured into the 1980's.

The revised report also concludes that the Alma Bowl building is an “undistinguished” early example of Alan Walter’s firm’s work and does not demonstrate a high level of artistic merit.

Comment A(5) The protest says that there is not adequate information in the documentation about early owners of the property and of the bowling alley to judge whether or not the persons associated with the Alma Bowl may have made significant contributions to the community, “particularly within the evolution of social and entertainment patterns”.

Response: The supplemental information in the historic report identifies specifically the persons that were involved in owning, operating and managing the bowling alley and restaurant, from the building’s construction to present (pages 9-10), and also discusses bowling leagues that used the facility (page 10), the operators of the restaurant and cocktail lounge (page 10), the types of food served in the restaurant (page 10), and reports anecdotally that Mel Torme apparently performed there in the 1960's (page 10). The LoBue family, who were farmers and business people in the area, built and owned the Alma Bowl until 1964, when the owner was identified as Leonard J. Macchiarella, who also owned a bowling alley on McKee Road. Members of the LoBue family are also among the present owners of the property.

The man identified as the first manager of the bowling alley, Frank T. Taormina, was identified as a “well-known bowler” (page 9).

The Alma Bowl was not the only bowling alley built during this period, and is not known to be associated with persons, eras or events that have contributed to local history, heritage, or culture in an important way. The LoBue family were members of the agricultural, shipping and commercial business establishment during the 1960's, but were not identified as being important contributors to the entertainment industry in the area. Additionally, it did not make an exceptional or noteworthy contribution to the recreation industry in Santa Clara County.

Comment A(6) The protest states that the conclusion in the historic report upon which the Initial Study relied, that the building is not significant architecturally, is not substantiated by more “architectural context” that is needed to reach the conclusion.

Response: The modified historic report states that the building is an undistinguished example of the architect’s early work and, while it includes elements of international modernism, it is not a noteworthy example of this style and does not demonstrate a high level of artistic merit. It is also identified as not being “an especially good example of innovative construction materials or methods.” (page 17) The report points out that generally “...a building that is less than 50 years old would not be eligible for listing in the California Register unless it is determined to be an exceptional example of more recent architecture and/or historical associations (page 15).” The report concludes that the building is not an exceptional example of its architectural style, not does it have exceptional historic associations.

Comment B. The protest letter acknowledges the archaeological investigation done for the property but wants a peer review done of the report prepared by Holman & Associates.

Response: It is not clear from this comment what purpose would be met by a peer review of the archaeological report. City staff have reviewed the report and determined that the report and testing program were prepared in conformance with professional standards in the field, and are consistent with the requirements of the CEQA Guidelines and the City of San José.

The work represented in the report included an archival review and a substantial program of subsurface testing conducted on the site. The work was supervised by Miley Holman, who has worked as an archaeologist in California since 1965, and has extensive experience in the Bay Area and Santa Clara County.

Ten backhoe trenches were excavated on the site, and the report identifies the findings from those trenches. While no specific resources were discovered, the report reflects the possibility that there may still be buried prehistoric resources present, particularly since it was not possible to excavate on the Sprig Electric site, which is still used by an active business.

The mitigation program recommended by Holman & Associates, and proposed for inclusion in the project, includes monitoring during initial excavation done once existing buildings and pavement are removed. Because of the proximity of a significant prehistoric site under the Tamien Station, the report includes a great deal of detail about its recommendation for an especially rigorous monitoring program that includes close coordination between construction personnel and archaeological monitors, and reflects the need for a comprehensive analysis and recovery program for any significant resources that might be uncovered at a future date.

The scope and recommendations of the report are fully consistent with the standards established by CEQA Guidelines §15064.5(c) through (f).

Summary: The revised Historical Evaluation dated August 22, 2003, incorporates the supplemented information about the building and the site's history into its discussion of the possibility that the existing Alma Bowl building might be a significant historic resource, based on local, state, and federal standards. The information provided in the revised historic report supports the conclusions reached previously, both in that report and in the Initial Study, that the project would not cause a substantial adverse change in the significance of important historic, as those resources are defined in §15064.5 of the CEQA Guidelines.

Additionally, the information provided in the archaeological report dated January 20, 2003 and supplemented by the report of a Subsurface Archaeological Reconnaissance dated March 2003, meet the standards for such investigations established by the CEQA Guidelines and the City of San José. With the inclusion of the mitigation proposed by the project and discussed in the March 2003 report, the project would not result in significant impacts to prehistoric resources, consistent with the thresholds of significance defined in §15064.5 of the CEQA Guidelines.

CONCLUSION

The California Environmental Quality Act (CEQA) specifies that the lead agency may adopt a Negative Declaration or an MND if it determines, based upon *substantial evidence* in the record, that (1) a proposed project would not have a significant effect on the environment, or (2) if the

Initial Study identifies a potentially significant effect but the project's proponent, before public release of the proposed MND, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level. Substantial evidence includes (1) fact, (2) a reasonable assumption predicated upon fact, or (3) expert opinion supported by fact. Substantial evidence is not an argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

The Director of Planning, Building and Code Enforcement issued and adopted an MND based upon the Initial Study and other evidence in the record. The City responded to written comments on the MND submitted during the public review period and determined that adequate street width and parking are available so that emergency vehicles would not be impeded to result in a significant effect on the environment.

While it is known that some public controversy exists regarding the project, no substantial evidence exists in the whole of the record to support a fair argument that the project will have a significant effect on the environment that would warrant the preparation of an EIR. Preparation of an EIR for this project would not disclose any more substantial information regarding the environmental impacts of the project than is currently known.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission are to (1) uphold the Negative Declaration for the proposed project, or (2) require the preparation of an EIR.

RECOMMENDATION

The Director of Planning, Building & Code Enforcement recommends that the Planning Commission uphold the Mitigated Negative Declaration prepared for the proposed project.

Stephen M. Haase, AICP, Director
Planning, Building and Code Enforcement

Attachments: (Exhibit A) MND Protest letters dated July 18 & July 23, 2003; (Exhibit B) MND; (Exhibit C) Initial Study dated June 2003.

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